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10 OXNARD POLICE DEPARTMENT, JOHN CROMBACH,
11 and ANDREW SALINAS

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 MARIA LAZOS, et al.,) No. CV 08-02987 RGK (SHx)
15)
16 Plaintiffs,) [consolidated w/
17) No. CV 08-05153 RGK (SH)]
18 v.)
19) **DEFENDANTS' REPLY TO**
20 CITY OF OXNARD, et al.,) **PLAINTIFFS' OPPOSITION TO**
21) **DEFENDANTS' MOTION IN**
22 Defendants.) **LIMINE No. 3 TO PRECLUDE**
23) **EVIDENCE AND/OR ARGUMENT RE**
24) **LESSER INTRUSIVE FORCE**
25)
26) [Motion in Limine No. 3]
27 AND CONSOLIDATED ACTION.)
28)
29) Date : August 11, 2009
30) Time : 9:00 a.m.
31) Ctrm : 850 Roybal

32 Defendants hereby submit the following reply to Plaintiff's
33 Opposition to Third Motion in Limine.

34 The Defendants' Third Motion in Limine was to preclude
35 evidence and/or argument regarding the use of lesser intrusive
36 force. Defendants provided overwhelming case law from the Ninth
37 Circuit as well as other Circuits supporting the position that the
38 Fourth Amendment does not require officers to use the most

1 reasonable means of effecting a search or seizure, only that the
2 means used be reasonable. The issue is not whether there were less
3 intrusive alternatives available – that is, more effective and less
4 painful ones – but whether the techniques used were or were not
5 excessive force. As such, evidence and/or arguments of lesser
6 intrusive force are not relevant or admissible.

7 Plaintiffs cite no less than 13 cases in their opposition,
8 however, not a single one addresses the issue raised by this
9 motion, let alone contradict defendants' position. Additionally,
10 plaintiffs completely mislead the court with their rendition of how
11 the incident occurred, it is unsupported by the evidence.

12 **CONCLUSION**

13 For the foregoing reasons and authorities, it is respectfully
14 requested that the Court grant this in limine motion and preclude
15 plaintiff from arguing and/or presenting evidence regarding the use
16 of lesser intrusive force.

17
18 Dated: July ____, 2009

19 LAW OFFICES OF ALAN E. WISOTSKY

20
21 By: _____
22 DIRK DeGENNA
23 Attorneys for Defendants,
24 CITY OF OXNARD, OXNARD POLICE
25 DEPARTMENT, JOHN CROMBACH, and
26 ANDREW SALINAS
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